

**JAN 19 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PEDRO CALON-ESPINO,

Defendant - Appellant.

No. 04-30415

D.C. No. CR-03-00061-GMK

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Garr M. King, District Judge, Presiding

Submitted January 9, 2006<sup>\*\*</sup>

Before: HUG, O'SCANLLAIN, and SILVERMAN, Circuit Judges.

Pedro Calon-Espino appeals the 87-month sentence imposed following his guilty-plea conviction for knowingly and intentionally possessing with intent to distribute methamphetamine in violation of 21 U.S.C. § 841 and 18 U.S.C. § 2.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

As part of his plea agreement, Calon-Espino waived his right to appeal his conviction or sentence so long as his sentence did not exceed the statutory maximum and the district court did not apply an upward departure from the applicable guideline range. Relying on the Supreme Court's holding in the subsequently decided *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), Calon-Espino contends that his plea, and its appellate waiver, were not intelligent or voluntary because the district court misinformed him that the Sentencing Guidelines were mandatory. Calon-Espino's contention is foreclosed by *United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir.2005) (“[A] change in the law [such as *Booker* ] does not make a plea involuntary and unknowing.”). Accordingly, we enforce the appeal waiver, and dismiss the appeal. *Id.*

**DISMISSED.**